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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CHELSEA DAWN GERLACH,

Defendant.

**CR 06-60079-AA
06-60122-AA**

**NOTICE OF INTENT TO SEEK
DOWNWARD DEPARTURE**

The defendant, Chelsea Dawn Gerlach, by and through her counsel, Craig E. Weinerman, Assistant Federal Public Defender, and pursuant to the provisions of U.S.S.G. §5K2.0, hereby provides notice that should the Court apply the terrorism enhancement, U.S.S.G. §3A1.4, to her sentence, she will move for a downward departure on the following grounds:

1. Increasing her criminal history category from criminal history category I to criminal history category VI “substantially overrepresents the seriousness of the defendant’s criminal history *or* the likelihood that the defendant will commit other crimes . . .” U.S.S.G. §4A1.3(b) (emphasis added);
2. The offenses committed by Ms. Gerlach “are not typical ‘terrorist’ activities, [and] the court has discretion to depart downward ‘[w]hen [the] court finds an atypical case, one to which a particular guideline linguistically applies but where conduct significantly differs from the norm.’” *United States v. Thurston, et al.*, Case No. CR 06-60069-AA, at p. 26 n.3 (D. Or. 2007) (citing *Koon v. United States*, 518 U.S. 81, 93 (1996)); *United States v. Garvey*, 383 F.Supp.2d 1374, 1378-79 (N.D. 2005) (a variance from the advisory guideline range was warranted after application of the terrorism enhancement because the defendant did not cause physical injury to a single person), *rev’d on other grounds*, ___ F.3d ___, 2007 WL 1059097 (11th Cir. April 11, 2007); and
3. The offenses committed by Ms. Gerlach and the others targeted property, there was no intent to kill, injure, or harm people, and no person was killed or injured, therefore, their conduct is outside the heartland of terrorism offenses. *Thurston*, at p. 42 (citing U.S.S.G. §5K2.0); *United States v. Mandhai*, 375 F.3d 1243, 1249 (11th Cir. 2004) (“12 level increase . . . [in the] offense level

required by the terrorism enhancement prevent[ed] the penalty from fitting the crime . . .”)

RESPECTFULLY SUBMITTED May 22, 2007.

s/Craig E. Weinerman

Craig E. Weinerman

Attorney for Defendant Chelsea Dawn Gerlach